A

YUSUF AWANG & ORS

v.

DATUK BANDAR MAJLIS BANDARAYA SHAH ALAM & ANOR

B

FEDERAL COURT, PUTRAJAYA
ABDUL HAMID MOHAMAD FCJ
NIK HASHIM FCJ
AZMEL MAAMOR FCJ
C [CIVIL APPEAL NO: 01-2-2007 (B)]
1 OCTOBER 2007

LOCAL GOVERNMENT: *Squatters - Removal of squatters - Demolition of squatter huts - Procedure as to notices - Local authority*
D *issuing notice under reg. 10 of Essential (Clearance of Squatters) Regulations 1969 - Whether notice valid - Whether null and void - Whether inconsistent with provisions of other written law - Essential (Clearance of Squatters) Regulations 1969, reg. 10 - Street, Drainage and Building Act 1974, s. 72 - Town and Country Planning Act 1976,*
E *s. 30*

STATUTORY INTERPRETATION: *Construction of statutes - Essential (Clearance of Squatters) Regulations 1969 - Regulation 10 - Notice to remove squatters and demolish squatter huts - Validity -*
F *Whether inconsistent with provisions of other written law - Essential (Clearance of Squatters) Regulations 1969, reg. 10 - Street, Drainage and Building Act 1974, s. 72 - Town and Country Planning Act 1976, s. 30*

G The appellants, who were squatters on two pieces of land in Kelang, Selangor ('the said property'), were served with notices under reg. 10 of the Essential (Clearance of Squatters) Regulations 1969 ('the said regulations') by the respondents local authority, requiring them to vacate the said property and demolish their respective squatter huts within seven days thereof. The appellants
H contended that reg. 10 was inconsistent with s. 72 of the Street, Drainage and Building Act 1974 ('the 1974 Act') and s. 30 of the Town and Country Planning Act 1976 ('the 1976 Act') – which provided for a 30-day time frame for the issuance of like notices to demolish or remove unauthorized buildings – and in the
I circumstances applied to the High Court to declare reg. 10 null and void and for an injunction to restrain the respondents from

evicting them. The High Court allowed the application, but on appeal the Court of Appeal took the opposite view and reversed the decision of the learned judge. The appellants appealed further and, upon being granted leave, posed the following question to the Federal Court, namely:

> whether Regulation 10 of the Essential (Clearance of Squatters) Regulations 1969 is subject to or inconsistent with s. 72 of the Street, Drainage and Building Act 1974 and s. 30 of the Town and Country Planning Act 1976 and therefore renders the 7-day notice issued under that regulation without first complying with s. 72 and s. 30 null and void.

Held (answering question in the negative)
Per Azmel Maamor FCJ delivering the judgment of the court:

(1) The buildings erected on the said property came within the meaning of "squatter huts' as defined under reg. 2 of the said Regulations because the appellants were unable to show that the buildings were erected in accordance with a plan approved by the local authority or that a licence had been issued in that respect. The contention that they had been in occupation of the land without any interruption by the landowner, or had constructed the buildings with the latter's consent, would not help change the status of the buildings as squatter huts *in lieu* of the necessary approval. (para 10)

(2) The existence of the said Regulations were brought about by virtue of Ordinance No. 1 and Ordinance No. 2 Emergency (Essential Powers) Ordinance 1969, which was repealed by the Emergency (Essential Powers) Act 1979 ('the 1979 Act'). The repeal notwithstanding, the 1979 Act however validates all subsidiary legislation made under the 1969 Ordinance, including the said regulations, which has never been repealed. This was clear from the preamble to the 1979 Act as well as from s. 2(4) of the said Act. (paras 14-16)

(2a) In the upshot, the said regulations shall have effect notwithstanding the provisions of any written law. It follows that the said notice under reg. 10, which was derived from the said Regulations, was validly issued and enforceable in law notwithstanding the provisions of s. 72 of the 1974 Act and s. 30 of the 1976 Act. It follows further that our answer to the question posed would be in the negative. (paras 17-18)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu-perayu, iaitu setinggan-setinggan yang menduduki dua bidang tanah di Kelang, Selangor ('hartanah tersebut'), telah diserahkan dengan notis-notis di bawah per. 10 Peraturan-
B Peraturan Perlu (Pembersihan Setinggan) 1969 ('Peraturan tersebut') oleh pihakberkuasa tempatan responden, meminta supaya perayu-perayu mengosongkan hartanah tersebut dan meruntuhkan kediaman-kediaman setinggan mereka dalam tempoh 7 hari. Perayu-perayu mengatakan bahawa per. 10 adalah tidak konsisten dengan
C s. 72 Akta Jalan, Parit dan Bangunan 1974 ('Akta 1974') dan s. 30 Akta Perancangan Bandar dan Desa 1976 ('Akta 1976') – yang memperuntukkan tempoh 30 hari bagi notis serupa yang dikeluarkan untuk pemusnahan bangunan-bangunan yang dibina secara haram – dan dengan itu telah memohon ke Mahkamah
D Tinggi untuk mengisytiharkan per. 10 tak sah dan batal serta untuk suatu injunksi menghalang responden-responden dari menghalau mereka. Mahkamah Tinggi membenarkan permohonan, tetapi atas rayuan Mahkamah Rayuan telah mengambil pendapat yang berbeza dan mengakas keputusan yang arif hakim. Perayu-
E perayu terus merayu, dan setelah diberi izin, telah mengemukakan soalan berikut kepada Mahkamah Persekutuan, iaitu:

> sama ada Peraturan 10 Peraturan-Peraturan Perlu (Pembersihan Setinggan) 1969 tertakluk kepada atau tidak konsisten dengan s. 72 Akta Jalan, Parit dan Bangunan 1974 serta s. 30 Akta
F Perancangan Bandar dan Desa 1976 sekaligus menyebabkan notis 7 hari yang dikeluarkan di bawah peraturan tersebut tanpa terlebih dahulu mematuhi s. 72 dan s. 30 tak sah dan batal.

Diputuskan (menjawab soalan secara negatif)

G **Oleh Azmel Maamor HMP menyampaikan penghakiman mahkamah:**

(1) Bangunan-bangunan yang didirikan di atas hartanah tersebut adalah terangkum ke dalam maksud "pondok setinggan" seperti yang ditakrif oleh per. 2 Peraturan tersebut kerana
H perayu-perayu gagal menunjukkan bahawa ia dibina mengikut pelan yang diluluskan oleh pihakberkuasa tempatan ataupun bahawa suatu lesen telah dikeluarkan baginya. Hujah bahawa mereka telah menduduki tanah tersebut tanpa apa-apa gangguan oleh tuantanah, atau telah membina bangunan-
I bangunan dengan kebenaran tuantanah, tidak dapat mengubah status kediaman-kediaman tersebut sebagai pondok setinggan disebabkan oleh kelulusan yang diperlukan itu.

(2) Kewujudan Peraturan tersebut berpunca dari Ordinan 1 dan Ordinan 2 Ordinan Darurat (Kuasa-kuasa Perlu) 1969, yang telah dimansuhkan oleh Akta Darurat (Kuasa-kuasa Perlu) 1979 ('Akta 1979'). Namun begitu, walaupun telah memansuhkan Ordinan 1969, Akta 1979 telah mengesahkan semua undang-undang subsidiari yang dibuat di bawah Ordinan 1969 itu, termasuk Peraturan tersebut, yang tidak pernah dimansuhkan. Ini jelas dari mukaddimah kepada Akta 1979 dan dari peruntukan s. 2(4) Akta tersebut.

(2a) Dengan demikian, Peraturan tersebut hendaklah terus berkuatkuasa walau apapun yang diperuntukkan di dalam undang-undang bertulis lain. Ianya mengikut bahawa notis di bawah per. 10, yang dikeluarkan di bawah Peraturan tersebut, telah dikeluarkan secara sah dan adalah berkuatkuasa di sisi undang-undang, walaupun terdapat peruntukan-peruntukan s. 72 Akta 1974 dan s. 30 Akta 1976. Ianya mengikut selanjutnya bahawa jawapan kami kepada soalan yang dikemukakan adalah berbentuk negatif.

Legislation referred to:
Emergency (Essential Powers) Act 1979, s. 2(4)
Essential (Clearance of Squatters) Regulations 1969, regs. 2, 10
Street, Drainage and Building Act 1974, s. 72(1)
Town and Country Planning Act 1976, s. 30(1)

For the appellants - CK Teng; M/s Teng Chang Khim & Co
For the respondents - S Suresh; M/s Rastam Singa & Co

[Appeal from Court of Appeal; Civil Appeal No: B-01-67-2004]

Reported by WA Sharif

JUDGMENT

Azmel Maamor FCJ:

[1] The Federal Court granted leave to the appellants to appeal to the Federal Court based on the following question:

> Whether the Regulation 10 of the Essential (Clearance of Squatters) Regulations 1969 is subject to or inconsistent with section 72 of the Street Drainage and Building Act 1974 and section 30 of the Town and Country Planning Act 1976 and therefore renders the 7 day notice issued under that regulation without first complying with s. 72 and s. 30 null and void.

A **Background**

[2] The appellants are individuals who are *de facto* occupiers of 2 pieces of land known as GRN 43019, Lot 37448 and GM 1849, Lot No. 17494 Mukim Kapar, Daerah Klang, Selangor ("the
B said property"). At the material time the owner of the said property is a company named Hock Hup Developments Sdn Bhd (now renamed as Ken Rimba Jaya Sdn Bhd).

[3] The 1st respondent is the Mayor of the Shah Alam City Council whereas the 2nd respondent is the Shah Alam City
C Council, a local authority within the meaning of the Local Government Act 1976.

[4] On 15 October 2003, the respondents served notices pursuant to reg. 10 of the Essential (Clearance of Squatters)
D Regulations 1969 ("the said regulations") on the 1st to the 9th appellants. On 16 October 2003, similar notices were served on the 10th to the 12th appellants. These notices basically informed the appellants that they have constructed or are occupying squatter huts on the said property and have committed an offence
E under the said regulations.

[5] As such, they were required within seven days from the date of the notices to remove any person or moveable property and demolish their respective squatter huts. It was stated in the
F notices that if they failed to comply with the notice, the respondents would take the necessary action without further notice.

[6] On 21 October 2003, the appellants filed an originating
G summons in the Shah Alam High Court against the respondents and prayed the following reliefs namely:

(i) that the said notices issued by the respondents under Regulation 10 of the said Regulations be declared as null and void; and

H

(ii) that the respondents be restrained from evicting the appellants by any manner whatsoever from the said property including harassing and threatening the respondents.

On 7 July 2004, the learned High Court Judge granted the
I declaration prayed for, together with the injunction.

[7] On an appeal by the respondents, the Court of Appeal by a majority decision on 9 February 2007 reversed the decision of the High Court and set aside the orders which had been granted through the originating summons. Hence the appeal to this court.

[8] A copy of the said notices that were served on the appellants was worded as follows:

PERATURAN-PERATURAN PERLU
(PEMBERSIHAN SETINGGAN-SETINGGAN 1969)
NOTIS MEROBOH BANGUNAN
(PERATURAN 10)

Adalah dimaklumkan bahawa satu siasatan/bancian telah dijalankan dan didapati tuan/puan telah mendirikan/mendiami binaan setinggan di - (address) - tanpa kebenaran dari pihak Majlis.

2. Oleh yang demikian, tuan/puan didapati melakukan kesalahan dibawah Peraturan-peraturan Perlu (Pembersihan Setinggan-setinggan) 1969. Tuan/Puan dikehendaki dalam tempoh 7 hari dari tarikh notis ini supaya menjalankan kerja-kerja yang perlu bagi maksud itu iaitu:

(a) mengalihkan apa-apa orang atau harta alih; dan

(b) merobohkan apa-apa binaan diatas tanah tersebut.

SILA AMBIL PERHATIAN sekiranya tuan/puan didapati gagal/ engkar mematuhi notis ini sehingga luput tempoh masa yang ditetapkan, pihak Majlis boleh mengambil tindakan tanpa sebarang notis selanjutnya ditetapkan lagi.

Apa-apa kerosakan dan kerugian adalah tanggungjawab tuan/Puan sendiri. Pihak Majlis tidak akan memberi sebarang tuntutan gantirugi. Pihak Majlis juga akan menuntut kos dalam mengambil tindakan diatas.

(Signed)
b/p Datuk Bandar
Majlis Bandaraya Shah Alam

PENERIMA NOTIS

Saya – (name) – mengaku telah menerima notis seperti diatas.

(sign) Tarikh:

No. Kad Pengenalan:

The above notice clearly states that seven days' notice was given to the appellants to vacate and demolish the said squatter huts. This is in conformity with reg. 10 of the said regulations which reads:

> 10(1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding Regulations 6 and 7, the local authority, its agents or servants may after giving 7 days' notice in writing to the occupier:
>
> (a) enter by day or night any private land for the purpose of summarily demolishing any squatter hut; and
>
> (b) remove any person or movable property in any squatter hut; and
>
> (c) summarily demolish any squatter hut on the land.

[9] The first point that needs careful consideration is whether the structure or construction occupied by the appellants come within the meaning of "squatter hut". Regulation 2 of the said regulations defines "squatter hut" as follows:

> any house, hut, shed, lean-to, shelter, roofed enclosure or any extension or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a license issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land.

[10] Having regard to the facts and circumstances of this case we have no difficulty in concluding that the buildings erected on the said property come within the meaning of "squatter hut" as defined under reg. 2 because the appellants were unable to show that the said building were erected in accordance with a plan approved by the local authority or had been issued with a licence. The contention that they had been in occupation of the land without any interruption by the landowner would not help to change the status of the buildings being squatter huts *in lieu* of the necessary approval. To that extent even if the buildings were constructed with the consent of the land owner, so long as they were not in accordance with the plan approved by the local authority they would still come within the meaning of "squatter hut" under reg. 10.

[11] However, it was strenuously contended by the appellants that s. 72 of the Street Drainage and Building Act 1974 ('the 1974 Act') which governs the demolition or removal of unauthorized building and s. 30 of the Town and Country Planning Act 1976 ('the 1976 Act') which deals with requisition notice, states otherwise regarding the time period for the notice. Both Acts lay down a 30 day period time frame. Section 72(1) of the 1974 Act reads:

> (1) Where the local authority is satisfied that a building has been erected or is in the course of erection or is about to be erected in contravention of section 70 or, if such a building has been erected prior to the coming into force of this Act, in contravention of any law then in force relating to buildings and in respect of which building approval under any law was not given subsequently, the local authority may by notice served on the owner of the land require him to do any one or more of the following acts:
>
> (a) to abstain from commencing or proceeding with the erection of such building;
>
> (b) to demolish such building within such time as the local authority may specify; and
>
> (c) to take steps as may be ordered by the local authority.
>
> (6) Where the building is to be demolished by the local authority, it shall give **at least thirty days notice** to the occupants of the building requiring them to vacate the building and the local authority may after the lapse of the period enter the building and remove any person or movable property found therein. (emphasis added).

[12] Section 30(1) of the 1976 Act on the other hand reads:

> (1) If the local planning authority is satisfied:
>
> (a) that any use of land should be discontinued; or
>
> (b) that conditions should be imposed on the continued use thereof; or
>
> (c) that any building or works on any land should be altered or removed.
>
> the local planning authority may, with the approval of the State Authority, by a requisition notice served on the owner of the land:

A (i) require the discontinuance of that use; or

(ii) impose such conditions for the continued use of the land as may be specified in the requisition notice; or

(iii) require such steps as may be specified in the requisition
B notice to be taken for the alteration or removal of the building or works;

and the owner shall, within such period as may be specified in the requisition notice, **not being less than one month** from the date of service of the notice, comply with such
C requirements or conditions. (emphasis added).

[13] The focal issue that needs careful consideration now is whether the respondents were correct in giving a seven day notice under reg. 10 of the said regulations. In order to arrive at a fair
D and just finding, it is therefore essential to trace the history as to how the said regulations came into being.

[14] The existence of the said regulations were brought about by virtue of Ordinance No. 1 and Ordinance No. 2 Emergency
E (Essential Powers) Ordinance 1969, which was subsequently repealed by Emergency (Essential Powers) Act 1979 which came into force on 20 February 1979 (the 1979 Act).

[15] The 1979 Act validates all subsidiary legislation made or purporting to have been made under the 1969 Ordinance
F including the said regulations which was created to deal with the problem of squatters and squatter huts. The preamble of the 1979 Act reads:

EMERGENCY (ESSENTIAL POWERS) ACT 1979

G

An Act under Clause (5) of Article 150 of the Federal Constitution to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance, 1969, and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after the 20th
H February 1971, and for the validation of all acts and things done under the said Ordinance or any subsidiary legislation made or purporting to have been made thereunder, and to provide for matters connected therewith.

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[16] From the above scenario it is quite clear that even though the 1969 Ordinance had been repealed the subsidiary legislations that had been created under it including the said regulations continued to be validated by virtue of the 1979 Act. The relevant provision regarding this matter is s. 2(4) of the 1979 Act which reads:

> (4) An Essential Regulation, and any order, rule, or by-law duly made in pursuance of such a regulation *shall have effect notwithstanding anything inconsistent therewith contained in any written law, including the Constitution of any State, other than this Act* or in any instrument having effect by virtue of any written law other than this Act. (emphasis added).

[17] Hence there should be no doubts whatsoever that the said regulations shall have effect notwithstanding the provisions of any other written law particularly the 1974 Act and the 1976 Act. It must also be noted that the regulations have never been repealed. It continues to exist even after the repeal of the 1969 Emergency Ordinance.

[18] We are therefore of the view that the said regulations shall have effect notwithstanding the provisions of any other written law. For the reasons as mentioned above, we arrived at the finding that the said notice which was derived from the said regulations was validly issued and enforceable in law notwithstanding the provisions of s. 72 of the 1974 Act and s. 30 of the 1976 Act. In the circumstances, our answer to the question posed would be in the negative. The appeal is therefore dismissed with costs.

[19] My learned brothers Abdul Hamid Mohamad, FCJ (now PCA) and Nik Hashim bin Nik Ab. Rahman, FCJ have seen this judgment in draft and have expressed their agreement with it.